

**U.S. Department of Education**

**Staff Report  
to the  
Senior Department Official  
on  
Recognition Compliance Issues**

<b>RECOMMENDATION PAGE</b>
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1. **Agency:** New York State Board Of Regents (1952/2007)  
(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)
2. **Action Item:** Petition for Continued Recognition
3. **Current Scope of Recognition:** The accreditation of those degree-granting institutions of higher education in New York that designate the agency as their sole or primary nationally recognized accrediting agency for purposes of establishing eligibility to participate in HEA programs including accreditation of programs offered via distance education within these institutions.
4. **Requested Scope of Recognition:** Same
5. **Date of Advisory Committee Meeting:** December, 2012
6. **Staff Recommendation:** Remove distance education from the agency's scope of recognition. Continue the agency's recognition under its revised scope and require the agency to come into compliance within 12 months, and submit a compliance report that demonstrates the agency's compliance with the issues identified below.
7. **Issues or Problems:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section.  
  
-- The agency must provide the job descriptions for the four administrative staff members to demonstrate that all accreditation functions are addressed. [§602.15(a)(1)]

-- The agency must provide evidence that amendments have been approved and incorporated into its policies for appeals panels that meet the requirements of this criterion. The agency must also demonstrate the application of its policy. The agency must also provide documentation of the qualifications and experience for its Board of Regents, Commissioner, and RAC members.

[§602.15(a)(2)]

-- The agency must provide documentation showing that amendments have been approved and incorporated into its policies for appeals panels that meet the requirements of this criterion, and demonstrate the application of its revised policy. [§602.15(a)(3)]

-- The agency must provide its approved policy related to appeals panels that meet all of the requirements of this criterion, and demonstrate the application of its revised policy. Staff acknowledges the agency's contention that all of the members of the Board of Regents and the Commissioner of Education represent the public. However, in order to meet the Secretary's requirement, the agency must clearly identify its definition of public member in its policy and indicate which members of its decision-making bodies have been designated as public members (rather than as administrators or academics). The agency must also demonstrate that each of its decision-making bodies contains public members that meet the requirements of this criterion. [§602.15(a)(5)]

-- The agency must provide its updated and approved conflict of interest policy including its recusal policy and policy requiring conflicts of interest training for the Board of Regents, Commissioner of Education, Regents Advisory Council (RAC), administrative staff and its appeals panel. The agency must also document conflict of interest training for its Commissioner of Education, Regents Advisory Council (RAC), administrative staff, and appeals panel. The agency must demonstrate the application of its amended policies. [§602.15(a)(6)]

-- The agency needs to revise its recordkeeping policy and procedures to ensure that it maintains permanent records of substantive change decisions and correspondence significantly related to those decisions. The agency must also provide information about how it stores its accreditation records. [§602.15(b)]

-- The agency must provide additional documentation to demonstrate that it consistently enforces its student achievement standard. The agency must provide documentation on how institutions are informed concerning student achievement benchmarks and where this data is located. [§602.16(a)(1)(i)]

-- The agency must provide its amended standards and policies regarding distance education including evidence of its evaluation of

institutions which offer programs or courses via distance education. The agency must also provide evidence of distance education training for those entities involved in accreditation activities. Since the agency has been found out of compliance with this criterion, Department staff recommend that the agency's scope be revised to no longer include the evaluation of distance education. Should the agency want to have distance education and/or correspondence education included in its scope, it will need to submit an application for an expansion of scope as provided under Section 602.31(b). [§602.16(b)(c)]

-- The agency must demonstrate that it conducts its own analysis of the institutions self-study, supporting documentation, and the site visit report when making its accreditation decision. [§602.17(e)]

-- Since the agency has been found out of compliance with the distance education review requirements of Section 602.16 (b)(c), and this criterion is included in any distance education review, a finding of compliance cannot be made absent evidence of its effective application. [§602.17(g)]

-- The agency must provide information and documentation to demonstrate its review and evaluation process for the annual report in relationship to its monitoring process. The agency must also address the inclusion of a policy concerning a midpoint self-study within the Regents Rules and Handbook of Institutional Accreditation that has not been implemented. [§602.19(b)]

-- The agency must provide documentation to demonstrate that it reviews and evaluates the annual headcount data it collects in monitoring the overall growth of institutions. [§602.19(c)]

-- The agency must provide its policy for significant growth and its definition of significant growth addressing the requirements of this criterion. [§602.19(d)]

-- The agency must provide its written policy for distance education headcount addressing the requirements of this criterion. The agency must also demonstrate the application of its policy and procedures for the review of distance education headcount. [§602.19(e)]

-- The agency must specify the maximum length of time for good cause extensions it awards in its enforcement policy. [§602.20(b)]

-- The agency must amend its policy to clearly indicate that it will take into account any comments submitted timely. [§602.21(c)]

-- The agency must amend its policy to clarify that the Board of Regents and the Commissioner of Education approve substantive changes, and that a substantive change must be approved prior to the inclusion within the grant of accreditation. The agency must also demonstrate the application of its substantive change policy. [§602.22(a)(1)]

-- The agency must amend its substantive change policy to address the requirements in paragraph (iii) and (iv) of this criterion. The agency must also provide documentation demonstrating its approval of the various types of substantive change required by this criterion. In addition, the agency must provide evidence of its entire review and approval process for substantive changes. [§602.22(a)(2)(i-vii)]

-- The agency must provide documentation to demonstrate its review and approval process for establishing an additional location. [§602.22(a)(2)(viii)]

-- The agency must establish a policy for determining when a new comprehensive evaluation is required in accordance with this section of the criteria. The agency must also demonstrate the application of its policy. [§602.22(a)(3)]

-- The agency must amend its substantive change policy to specify an effective date and that the effective date of the substantive change will not be retroactive. The agency must also document and demonstrate that its decision making body provides written notification indicating the approval and inclusion of the substantive change in the institution's grant of accreditation. [§602.22(b)]

-- The agency must make available to the public all of the information required by this criterion for its principal administrative staff, members of its Board of Regents, Commissioner of Education, and members of its appeals panel. [§602.23(a)]

-- The agency must provide its amended policy and procedures concerning complaints it receives regarding an institution to include all areas required by this section. It must also provide complete documentation of the implementation of its policy and procedures regarding complaints against itself. [§602.23(c)]

-- The agency must provide its amended policy addressing all of the requirements of this criterion. The agency must also demonstrate the application of its policy. [§602.24(c)(2)]

-- The agency must provide its written policy that specifically addresses the requirements of this criterion. [§602.24(c)(3)]

-- The agency must further amend its policy to include the requirement that institutions provide information to students about additional charges, if any, associated with a teach-out agreement. The agency must adequately demonstrate the application of its revised policy or indicate it has not had an opportunity to do so. [§602.24(c)(5)]

-- The agency must establish a written policy that specifically addresses the requirements of this section.  
[§602.24(d)]

-- The agency must provide as evidence, its policy revisions that specifically address the requirements of this criterion. It must also provide documentation demonstrating implementation of its transfer of credit policy.  
[§602.24(e)]

-- The agency must establish written policy that specifically requires it to promptly notify the Secretary if the agency finds systemic noncompliance with its credit hour policies or significant noncompliance regarding one or more programs at the institution.  
[§602.24(f)(4)]

-- The agency must provide documentation demonstrating it notifies an institution in writing of any adverse action and that it describes the basis for the action. [§602.25(a-e)]

-- The agency must provide its written policy related to its appeals panel that addresses the specific requirements of this criterion. The agency must also demonstrate the application of its policy. [§602.25(f)]

-- The agency must provide as evidence its written policy that requires it to notify an institution in writing of the results of an appeal and the basis for that result. [§602.25(g)]

-- The agency must amend its written appeals policy to specifically allow an institution to seek the review of new financial information only once, and that any determination by the agency made with respect to that review does not provide a basis for an appeal. [§602.25(h)]

-- The agency must amend its notification policy to include the specific requirements regarding positive decisions. The agency must also demonstrate that it provides notification within the required timeframe to all of the entities required by this criterion.  
[§602.26(a)]

-- The agency must provide its amended negative decision notification policy which specifically addresses all of the requirements of this criterion. The agency must also provide information and documentation

concerning the notification of probation actions or the equivalent. The agency must provide application of its updated policy. [§602.26(b)]

-- The agency must revise its policies to include that it will provide the brief summary required by this criterion to all of the required entities, absent a specific request within the required timeframe. It must also provide documentation of its timely provision of the information to all of the listed entities. [§602.26(d)]

-- The agency must amend its voluntary withdrawal of accreditation and a lapse of accreditation policies to specifically include the requirement to notify the public, upon request. [§602.26(e)]

-- The agency must amend its fraud and abuse notification policy to include all of the requirements of this criterion. [§602.27(a)(6-7),(b)]

-- The agency must provide documentation that demonstrates the application of its legal authorization policy. [§602.28(a)]

-- The agency must provide its written policy that specifically addresses the requirements of this criterion. It must also provide evidence of its application of this policy, or indicate that it has not had the occasion to apply it. [§602.28(b)]

-- The agency must provide its amended policy that clearly requires a timely explanation to the Secretary as to why the actions of the other agency did not preclude the agency accrediting the institution. [§602.28(c)]

-- The agency must revise its policy to clearly state that it will promptly review the affected institution's accreditation to determine if the agency should also take adverse action or place the institution on probation or show cause. [§602.28(d)]

## **EXECUTIVE SUMMARY**

### **PART I: GENERAL INFORMATION ABOUT THE AGENCY**

The New York State Board of Regents (NYBR) has been engaged in the evaluation of quality in higher education since 1787. It is the State approval agency that authorizes the establishment of all educational institutions in the State. That function also includes the responsibility to register all of the postsecondary programs offered in New York institutions offering degrees and certificates. As the only state agency recognized by the Secretary for its institutional accrediting activities, in 2002 the agency restructured its institutional accrediting activities to clarify its role and responsibilities as an institutional accrediting agency. The institutional accreditation activities now fall under the auspices of both the NYBR and the Commissioner of Education (Board of Regents). The Board of Regents accredits degree-granting institutions that have designated it as their sole or primary accrediting agency for the purpose of establishing eligibility to participate in the Title IV, HEA programs. In this capacity, the Board of Regents currently accredits 24 institutions, all of which are located in the State of New York.

The New York State Education Department (SED), the administrative arm of the NYBRE, carries out the accreditation activities of the Board of Regents. The State Education Department performs its duties and responsibilities under the direction of the Commissioner of Education. Within the SED, the Deputy Commissioner for Higher Education develops and implements the institutional accrediting activities.

### **Recognition History**

The New York Board of Regents appeared on the initial list of recognized agencies in 1952, and has received continuous recognition since that time. The National Advisory Committee on Institutional Quality and Integrity (NACIQI) last reviewed the agency's petition for renewal of recognition at the Spring 2007 meeting. Following that meeting, the Secretary granted the agency continued recognition for a period of five years.

After the Secretary issued her decision on the agency's recognition, the Higher Education Opportunity Act of 2008 (HEOA) was passed, which contained a number of provisions related to accrediting agency recognition that were effective upon enactment. The changes included, among others, a reconstitution of the NACIQI. In accordance with one of the statutory changes, the agency

notified the Secretary by letter of the expansion of its scope to include distance education. This meeting is the first opportunity for the agency to appear before NACIQI for a review based on the revisions.

Department staff observed a meeting of the Regents Advisory Council on November 28, 2012 in conjunction with the analysis of the agency.

## **PART II: SUMMARY OF FINDINGS**

### **§602.15 Administrative and fiscal responsibilities**

**The agency must have the administrative and fiscal capability to carry out its accreditation activities in light of its requested scope of recognition.**

**The agency meets this requirement if the agency demonstrates that--**

**(a) The agency has--**

**(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;**

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The agency states in its narrative that "under the direction of the Board of Regents and Commissioner of Education, the State Education Department (SED) carries out the Regents accreditation activities", and accreditation policy and oversight are the responsibility of the Deputy Commissioner for Higher Education. Accreditation activities are carried out by the Office of College and University Evaluation (OCUE), which, according to the narrative, consists of its coordinator, and (4) staff members.

Although the agency provided the curricula vitae for the four OCUE staff members (in Section 602.15(a)(2)) and the organizational chart for SED, the information and documentation provided does not reflect that all expected accrediting functions and activities are included, clearly identified, and effectively organized. Specifically, in Section 602.15(a)(2), the agency describes the qualifications and training of the OCUE staff members but does not describe the assigned duties or job descriptions.

In relation to performing its accreditation functions, the Department has not received any complaints related to the agency's administrative capacity that would signal that staffing levels are inadequate; furthermore, the agency has not indicated that accreditation reviews have been extended or postponed because of administrative staff shortages nor does the agency's list of accredited institutions indicate that accreditation reviews have been extended. In addition, the organizational charts provided by the agency indicate that, if needed, its administrative staff could be augmented by additional personnel assigned to the SED.

The NYBRE is a State agency subject to State budgetary processes in developing and implementing budget formulas, and the allocation of funds. To perform its accreditation function the agency's budget for fiscal years 2010-2011 and 2011-2012 was \$170,204. The attached budgets detail expected expenses for accrediting activities and verify the agency's funding as adequate to perform its accreditation functions. However, the budgets include salary lines for only two staff members. The source of funding for the other two staff members is not apparent from the information provided. The agency's budget projection for fiscal year 2012-2013 is \$180,350 and the agency's budget for 2013 has been

approved and matches its projections.

### **Analyst Remarks to Response:**

In response to the draft analysis, the agency explains that the FTE shown in the financial statement represents the portion of time each of these individuals contributes to accreditation activities which explains the discrepancies related to the budget. However, the agency did not provide the job descriptions of the four administrative staff members to demonstrate that staffing levels are adequate to support the agency's accreditation functions.

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**(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education;**

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The agency list the following entities as being actively involved in the accreditation review process: peer reviewers from colleges and universities, members of the Regents Advisory Council on Institutional Accreditation (RAC), and the New York State Board of Regents and the Commissioner of Education. The agency provided evidence of its training for these entities in relationship to accreditation activities, which includes an attendance roster for the scheduled trainings and training documents to include distance education which is a part of the agency's scope of recognition. Although the agency has adequately documented that training is being conducted for those entities involved in accreditation functions, it has not provided documentation, to include its policies and procedures, that requires and prescribes the type of training and the frequency of training for its Board of Regents, Commissioner of Education, and members of the RAC. The Handbook of Institutional Accreditation (in Section 602.11) does, however, document the agency's training requirements for its peer reviewers, who conduct on-site reviews, on page (2) of the publication.

The agency has documented that individuals involved in accreditation functions are competent and knowledgeable as appropriate for their roles. The New York State Board of Regents are elected by the State Legislature; their qualifications and credentials are displayed on the agency's website. The Commissioner of Education is appointed by the Board of Regents. The Commissioner's qualifications and credentials are also displayed on the agency's website. In addition, the qualifications and credentials of the members of the RAC are also displayed on the agency's website. Specifically, their current positions as educators and administrators in educational or civil organizations attest to their

experience and qualifications. RAC members are appointed by the Commissioner of Education. Although displayed on the website the agency did not provide the documentation as an attachment in this section.

The agency has also documented that its peer reviewers are educators or administrators at institutions of higher education or public schools.

It should be noted that the agency does not discuss or provide documentation concerning members of its appeals panel in relationship to the requirements of this criterion.

### **Analyst Remarks to Response:**

In response to the draft report, the agency states that it realizes that it must amend its policies to ensure compliance with this criterion related to appeals panels. The agency states that it will address these issues as soon as possible. However, until amendments have been approved by the Board of Regents it continues to be out of compliance with this criterion. In addition, as part of its response, the agency did not provide “documentation” of the qualifications and experience for its Board of Regents, Commissioner of Education, and RAC members. The documentation used to evidence the competency of the entities required by this criterion must be uploaded and made a part of the official record. Information contained on the agency’s website is not adequate.

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### **(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;**

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In accordance with the agency’s scope of recognition, Handbook of Institutional Accreditation and Part IV of the Regents Rules (see section 602.14a), the agency’s decision-making body, for the purpose of enabling the institutions it accredits access to Title IV federal student aid, is comprised of two entities; the Commissioner of Education and the New York State Board of Regents. Together these two entities form the agency’s decision making body. Their academic credentials, experience as educators and administrators, are available at the agency’s website as discussed in the narrative.

The Regents Advisory Committee (RAC), and peer reviewers perform accreditation evaluations or are involved in accreditation activities. As discussed in the narrative, each of the individuals involved in the agency’s accreditation activities has significant experience both as educators or administrators. Department staff verified the experience for members of the RAC is documented on the agency’s website. Although not discussed in the narrative, the agency also documents that peer reviewers are academicians or administrators at institutions of higher education.

The agency does not discuss or provide documentation concerning its appeals

panel in relationship to the requirements of this criterion.

**Analyst Remarks to Response:**

In response to the draft analysis, the agency acknowledges that it must amend its policies to ensure compliance with this criterion related to its appeals panel. However, until these amendments have been approved by the Board of Regents the agency continues to be out of compliance with this criterion.

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**(5) Representatives of the public on all decision-making bodies; and**

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The agency states in its narrative that members of the Board of Regents and the Commissioner of Education are all public members. The agency also discusses in its narrative that its definition of public member equals the Secretary's definition. However, the agency does not clearly identify its definition of a public member in the documentation provided. Therefore, Department staff cannot make a comparison of the agency's definition and the Secretary's definition. Although the agency states that all members of the Board of Regents and the Commissioner of Education are public members, the Department expects that a single individual performs one defined category at a time (e.g. academic, administrator, public member).

The agency also does not identify the details of its vetting process to ensure that its public members meet the Secretary's definition.

In addition, the agency does not discuss its appeals panel which is considered a decision making body in accordance with Secretary's Criteria for Recognition. The agency does not discuss the composition of its appeal panel, or identify public members serving on its appeal panel.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency references section 74 of Public Officers Law; however, it does not contain the specific language or elements which are used to define public members in the Secretary's Criterion for Recognition. Department staff cannot interpret the difference between the documentation provided by the agency and the definition of public member contained in 34 CFR Section 602.3. Although the agency's definition of a public member is not clear, the agency provided documentation of its vetting process to include signed affirmations.

All recognized accrediting agencies must have and identify public members (meeting the definition contained in Section 602.3, specifically) serving on their decision-making bodies. Department staff expects that individuals cannot serve dual roles, meaning, they cannot be identified as public members while also as serving as academics or administrators.

The agency acknowledges that it must amend its policies to ensure compliance with this criterion related to its appeals panel. However, to be considered as corrective action, policy amendments would have to be approved by the Board of Regents and the agency would need to demonstrate the application of its policy.

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**(6) Clear and effective controls against conflicts of interest, or the appearance of conflicts of interest, by the agency's--**

- (i) Board members;**
  - (ii) Commissioners;**
  - (iii) Evaluation team members;**
  - (iv) Consultants;**
  - (v) Administrative staff; and**
  - (vi) Other agency representatives; and**
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**Board of Regents and the Commissioner of Education**

The agency states that the Board of Regents conducts all of their business in adherence with a Code of Ethics, which they adopted in 1989 and reaffirmed in 1994. The Code of Ethics does contain guidelines to guard against conflict of interest for both the Board of Regents and the Commissioner of Education. An example of the implementation of the conflict of interest policy is demonstrated in the summary to consider granting accreditation (in Section 602.17(e)), as follows "Regents with a conflict of interest or the appearance of a conflict of interest on this application are asked to recuse themselves from participating in the deliberation and decision." This does demonstrate the agency ensures its decision making body is conscious of conflicts of interest; however, the referenced Code of Ethics does not include policy on recusals for the Board of Regents or the Commissioner, nor did the agency provide documentation to demonstrate the effective use of recusals. In addition, documentation provided by the agency for this criterion does not prescribe conflict of interest training requirements for members of its Board of Regents or the Commissioner of Education nor does the documentation prescribe the frequency of training. The agency has not documented that the Board of Regents and Commissioner of Education are trained on the conflict of interest policy.

The agency has also not provided any documentation for its decision-making body demonstrating that these individuals have read and understand the agency's conflict of interest policy.

**Administrative Staff**

The agency states that the Code of Ethics is also applicable to the administrative staff. The documentation provided by the agency for this criterion does not prescribe conflict of interest training requirements for its administrative staff nor does the documentation prescribe the frequency of training. The agency has not

documented that its administrative staff has received conflict of interest training. The agency has also not provided any documentation for its administrative staff demonstrating that these individuals have read and understand the agency's conflict of interest policy.

#### Peer Reviewers

The agency references its Handbook of Institutional Accreditation (in Section 602.11) as containing its conflict of interest policy in relationship to the site review process and peer reviewers specifically. As an example, the agency provided signed conflict of interest statements for peer reviewers to an institution stating that they have read and understand the agency's conflict of interest policy as it relates to their site evaluation function. This does satisfy a portion of this criterion by documenting that the agency has established conflict of interest policy for its peer reviewers. However, the conflict of interest policy depicted in the Handbook of Institutional Accreditation does not require peer reviewers to attend conflict of interest training or prescribe the frequency of training. The agency has not documented that these individuals have attended conflict of interest training.

#### Regents Advisory Council (RAC)

The Handbook of Institutional Accreditation by-laws establish the RAC. In accordance with the by-laws, the RAC will review all applications for accreditation and reaccreditation that are submitted to it by the Senior Deputy Commissioner of Education and make recommendation to the Board of Regents and the Commissioner based on its review. Therefore, although, the RAC is not a decision-making body it is deeply involved in the accreditation process and subject to the requirements of this criterion. The conflict of interest policy for the RAC is found in the by-laws. The policy states that members of the RAC shall not participate in any decisions in which there is a conflict or the appearance of a conflict between their duty in the public interest and their private interest. However, the policy does not discuss conflict of interest training or prescribe the frequency of training for members of the RAC. The agency has not documented that members of the RAC have attended conflict of interest training. The following statement does appear on the RAC meeting agenda provided: "Members with a conflict of interest or the appearance of a conflict of interest must reuse themselves from participation in the discussion and decision regarding the institution." This statement does demonstrate the application of the recusals policy for the RAC at an accreditation review meeting.

#### Appeals Panel

The agency did not provide any information or documentation concerning a conflict of interest policy related to its appeals panel. The agency's referenced Code of Ethics does not specifically discuss conflicts of interest for the appeals panel nor does the Handbook of Institutional Accreditation nor the Rules of the Board of Regents.

Although the agency provided website links to the documents, the agency must provide the Handbook of Institutional Accreditation, RAC by-laws, recusal

documentation and any other referenced document as an attachment to the petition to be considered documentation to demonstrate compliance and to be a part of the official record.

### **Analyst Remarks to Response:**

The agency states in its response that it previously documented the need for entities participating in accreditation reviews and decisions to recuse themselves when they may have conflicts of interest. While the documentation provided previously does indicate that the agency is conscious of conflicts of interest, the recusals statement in the documentation provided does not demonstrate application of recusals. Department staff did; however, witness recusals while observing a Regents Advisory Council meeting in conjunction with the analysis of the agency's petition. Also, as noted in the draft analysis, the agency did not provide its written policy for recusals.

The agency has documented in its response that conflict of interest training was conducted for the Board of Regents. However, the agency did not provide documentation that conflict of interest training was conducted for the Commissioner of Education, Regents Advisory Council (RAC), administrative staff and its appeals panel.

The agency states that it will update its accreditation handbook to include its longstanding recusal and conflict-of-interest policies. However, until the agency has done so, and provided documentation, a finding of compliance cannot be made. Also, the agency must ensure that its updated policy addresses all of the deficiencies noted in the draft analysis and must demonstrate the application of its policy.

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### **(b) The agency maintains complete and accurate records of--**

**(1) Its last full accreditation or preaccreditation reviews of each institution or program, including on-site evaluation team reports, the institution's or program's responses to on-site reports, periodic review reports, any reports of special reviews conducted by the agency between regular reviews, and a copy of the institution's or program's most recent self-study; and**

**2) All decisions made throughout an institution's or program's affiliation with the agency regarding the accreditation and preaccreditation of any institution or program and substantive changes, including all correspondence that is significantly related to those decisions.**

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The agency has not provided the information and documentation to satisfy the requirements of this criterion. Although the accreditation file checklist provided indicates that the agency maintains most of the documents required by this criterion, the checklist does not indicate whether the agency maintains a record of substantive change decisions and all correspondence related significantly to those decisions. In addition, the agency did not provide its recordkeeping policy so that Department staff can evaluate and determine that its policy contains all of the elements required. The agency has also not provided any information as to how long the agency stores a record or how it stores such accreditation records.

#### **Analyst Remarks to Response:**

In its response, the agency references its Handbook of Institutional Accreditation (page 87) as containing its recordkeeping policy. However, the policy does not specifically require the agency to maintain a permanent record of substantive change decisions and correspondence significantly related to those decisions. Also, the agency has not provided any information as to how it stores its accreditation records.

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#### **§602.16 Accreditation and preaccreditation standards**

**(a) The agency must demonstrate that it has standards for accreditation, and preaccreditation, if offered, that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if -**

- **(1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:**
  - (i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of course completion, State licensing examination, and job placement rates.**

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The agency addresses the requirements of this criterion in Section 4-1.4 of the Regents Rules on institutional accreditation, which requires that institutions have a clear mission statement and goals that are reflected in the policies, practices, and outcomes of the institution. In addition, this section also contains the agency's methods of assessing its student achievement standards in relationship to the institution's mission to include the preparation and implementation of an assessment plan. Its policy states that the assessment plan must include graduation and retention rates, and state licensing examination results or job placement rates, if applicable to the institution and its mission. The institution may include other outcomes data at its discretion. The agency has established benchmarks for graduation rates based on the type of institution (associate or

baccalaureate-degree granting) and job placement rates for two-year, four-year and graduate-only institutions that prepare students for employment. The rates are established annually by means of an assessment of the mean performance of cohorts of like institutions. What is unclear regarding these rates is how the institutions know what these benchmarks are and whether they are subject to them. The agency needs to provide information and documentation in this area.

The agency indicates that this quantitative data is reported and evaluated annually and during initial and renewal of accreditation. The annual report submitted (in Section 602.19(b)) documents an institution reporting student achievement data. The self-study provided (in Section 602.17(b)) verifies the submission of student achievement data as it contains data reflecting an average completion rate and job placement rate within six months of completion. In addition, the attached site visit reports provide documentation of the agency's evaluation of its student achievement standard and the institution's mission with regard to quantitative data.

In one of the site visit reports, the agency provided documentation of the peer review team's assessment of the appropriateness of the goals established by the institution in its assessment plan. However, the other site visit report does not demonstrate that the agency consistently and adequately enforces its student achievement standard, to include the required assessment plan. Specifically in the example provided, the peer review team found that the institution did not have an assessment plan and had not had one in place at the previous on-site review in 2007. Department staff questions the consistent evaluation and enforcement of this standard.

In addition to the standards, the agency's self-study guide, included in the Handbook of Institutional Accreditation, provides further guidance, in the form of examples of compliance and suggested documentation, to institutions in regards to student achievement. The self-study addresses student achievement and requires supporting documentation.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that enforcement of standards occurs during the decision-making portion of the accreditation process and provided examples of Board of Regents accreditation decisions. Department staff does not disagree with the agency's statement; however, as discussed in the draft analysis, the site visit report (attachment A44) for the institution's 2012 accreditation review identifies that in 2007 the site visit team indicated the need for a comprehensive assessment plan which the institution is required to have, in accordance with the agency's student achievement standard. The 2012 site visit team noted during its accreditation review that it did not see evidence that the institution made any appreciable progress towards the development of an assessment plan. Without further clarification or explanation, this information would indicate that the institution has been out of compliance with this standard for five years, and causes Department staff to question the consistent evaluation and enforcement of this standard by the agency. The agency must provide

documentation to demonstrate the consistent evaluation and enforcement of this standard

As part of its response, the agency provided an explanation of how institutions are informed regarding the agency's student achievement benchmarks (i.e. job placement rates or graduation rates for that particular year). However, this process is not documented in the agency's policy or standards, nor did the agency provide documentation of this process.

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**(b) If the agency only accredits programs and does not serve as an institutional accrediting agency for any of those programs, its accreditation standards must address the areas in paragraph (a)(1) of this section in terms of the type and level of the program rather than in terms of the institution.**

**(c) If the agency has or seeks to include within its scope of recognition the evaluation of the quality of institutions or programs offering distance education or correspondence education, the agency's standards must effectively address the quality of an institution's distance education or correspondence education in the areas identified in paragraph (a)(1) of this section. The agency is not required to have separate standards, procedures, or policies for the evaluation of distance education or correspondence education;**

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The agency's scope of recognition includes distance education due to the agency having notified the Secretary in 2009 of its desire to have distance education included in its scope of recognition, as provided in section 496(a)(4)(B)(i)(I) of the HEA. This is the first opportunity for Department review of the agency's evaluation of distance education.

In the narrative for 602.17(g), the agency states that it has developed new policies regarding distance education, which were to be reviewed in June 2012, after the agency submitted its current petition. Following their adoption, the accreditation staff planned to update the Handbook of Institutional Accreditation, including the self-study document, and training materials to provide guidance to institutions and peer reviewers on reviewing distance education. The new policies include a definition of distance education that comports with the Secretary's definition. However, the recent development and implementation of these policies related to distance education calls into question the ability of the agency to adequately and appropriately evaluate distance education programs since the inclusion within its scope in 2009.

The agency has not demonstrated how it evaluates courses or programs offered via distance education to determine if those offerings meet its standards. This is important since those programs may require institutions to use resources, procedures, or structures different than those needed for programs offered on-site. The agency provided no evidence of its review and assessment of

courses or programs offered via distance education, to include self-study materials, peer reviewer evaluation, and the guidance provided to both institutions and peer reviewers.

The agency does not have to establish separate standards for distance education; however, the agency must demonstrate how it reviews and assesses distance education in relation to their standards. The agency provides evidence that it has offered distance education training (in Section 602.15(a)(2)), but the agency has not demonstrated that all persons involved in accreditation activities or that make accreditation decisions have attended training. The documentation only includes evidence that two members of the RAC attended distance education training.

The agency's new policies include references to correspondence education. The agency needs to clarify whether it wishes to include the evaluation of correspondence education in its scope of recognition and, if so, provide documentation of its evaluation of correspondence education.

#### **Analyst Remarks to Response:**

The agency states in its response, that it has not conducted a site visit to an institution that offers the distance education mode of delivery since adoption of the agency's distance education requirements in June 2012. The agency also states that it is updating its Handbook of Institutional Accreditation, Regents Rules, and other documents used during the accreditation process to include the distance education requirements. However, the recent development and implementation of these policies related to distance education and the absence of any documentation related to the review and assessment of distance education does not demonstrate that the agency is able to adequately and appropriately evaluate distance education programs presently or since the inclusion within its scope of recognition in 2009. The agency has also failed to demonstrate that all persons involved in accreditation activities or that make accreditation decisions have attended training on distance education. Since the agency has been found out of compliance with this criterion, the agency's scope should be revised to not include the evaluation of distance education at this time. Should the agency want to have distance education included in its scope in the future, it would be advisable for the agency to submit an application for an expansion of scope as provided under 602.31(b), to safeguard against adverse consequences to its accredited entities in the event its distance education review again falls short.

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#### **§602.17 Application of standards in reaching an accrediting decision.**

**The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it--**

**(e) Conducts its own analysis of the self-study and supporting documentation furnished by the institution or program, the report of the on-site review, the institution's or program's response to the report, and any other appropriate information from other sources to determine whether the institution or program complies with the agency's standards; and**

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Section 4-1.5 of the Rules of the Board of Regents establishes the procedures for accreditation. The agency's policy is extremely detailed and has several layers of review prior to an accreditation decision. This process does ensure that the Board of Regents has several recommendations along with the physical data to make an informed accreditation decision.

The agency's policies related to conducting site visits, evaluation of the site visit report, and the Board of Regents final accreditation decisions are well documented in its Handbook of Institutional Accreditation and the Rules of the Board of Regents. As documented in previous criterion, institutions submit a self-study document as part of the review process. Site teams examine the self-study as part of the on-site review to determine compliance with its standards.

The institution is allowed to review the findings of the site visit report and make comments prior to the State Education Department preparing the compliance review report which is forwarded to the Regents Advisory Committee (RAC) for their review and recommendation to the Commissioner of Education and the Board of Regents for the final accreditation action.

The attachments provided (in this section and throughout the petition) document a thorough analysis of the data collected during an institution's accreditation review. Specifically, the examples provided detail the multiple levels of review and clearly indicate that all documentation related to the accreditation review of the institution is reviewed by entities prior to the Board of Regent's review. The examples also demonstrate that the agency's decision-making body considered the findings and recommendation of the RAC when making its accreditation decision. What the agency has not demonstrated is that its decision-making body conducts its own analysis of the self-study, supporting documentation, and the site visit report when making its accreditation decision.

#### **Analyst Remarks to Response:**

In its response the agency states all accreditation application materials (institution's self-study, site visit team report, the institution's response to the team report) are available to members of the Board of Regents. However, the documentation referenced by the agency (see A37) does not provide the evidence that the Board of Regents conducted its own analysis of the institutions self-study, supporting documentation, and the site visit report when making its accreditation decision. This documentation only references the Board of Regents

as reviewing the recommendation of other committees which does not demonstrate that an analysis was conducted. In addition, the agency has not demonstrated that accreditation application materials (institution's self-study, site visit team report, the institution's response to the team report) are made available to the Board of Regents. While observing a Regents Advisory Council meeting, Department staff inquired if these materials were made available to the Board of Regents for their review and accreditation decision. The agency's administrative staff stated that all materials are made available to the Board of Regents, in hard copy.

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**(g) Requires institutions that offer distance education or correspondence education to have processes in place through which the institution establishes that the student who registers in a distance education or correspondence education course or program is the same student who participates in and completes the course or program and receives the academic credit. The agency meets this requirement if it--**

**(1) Requires institutions to verify the identity of a student who participates in class or coursework by using, at the option of the institution, methods such as--**

**(i) A secure login and pass code;**

**(ii) Proctored examinations; and**

**(iii) New or other technologies and practices that are effective in verifying student identity; and**

**(2) Makes clear in writing that institutions must use processes that protect student privacy and notify students of any projected additional student charges associated with the verification of student identity at the time of registration or enrollment.**

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At the time the agency submitted its petition, its distance education policy was not yet in effect addressing this criterion even though it has accredited institutions that currently offer distance education programs.

The agency discusses in its narrative that it had written amendments to the Regent's Rules, due to take effect June 13, 2012, implementing its requirements for distance education. The agency has included these amendments in its narrative, which address the requirements this section. However, the agency has not provided documentation from its approval authority authorizing these amendments or of their implementation.

In addition, the policy on verification of student identity references correspondence education, which was not included in the agency's notification to the Secretary in 2009. As noted in 602.16(c), the agency needs to clarify whether it wants to be recognized for correspondence education as well as

distance education and provide appropriate documentation to demonstrate its effective review of both modes of delivery. The agency must provide documentation to demonstrate implementation of these amendments as applicable to this section.

#### **Analyst Remarks to Response:**

In its response to the draft analysis the agency provided documentation to demonstrate that it has approved the distance education policy as it relates to student verification which meets the requirements of this criterion. As noted previously, the agency states that it has not had the opportunity to evaluate an institution which offers courses or programs via distance education since adoption of the agency's distance education requirements. However, in order to be approved for the evaluation of distance education, the agency needs to provide evidence that it has effectively reviewed distance education programs. Since this criterion is included in any distance education review, a finding of compliance cannot be made absent evidence of its effective application.

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#### **§602.19 Monitoring and reevaluation of accredited institutions and programs.**

**(b) The agency must demonstrate it has, and effectively applies, a set of monitoring and evaluation approaches that enables the agency to identify problems with an institution's or program's continued compliance with agency standards and that takes into account institutional or program strengths and stability. These approaches must include periodic reports, and collection and analysis of key data and indicators, identified by the agency, including, but not limited to, fiscal information and measures of student achievement, consistent with the provisions of §602.16(f). This provision does not require institutions or programs to provide annual reports on each specific accreditation criterion.**

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The agency cites Section 4-1.3(f) of the Regents Rules which list the agency's reporting requirements. This section does provide the monitoring capability required by this criterion. In addition, the Handbook of Institutional Accreditation specifically states that during its accreditation period institutions provide annual reports and a midpoint self-study for review to assure sustained compliance with all accreditation standards.

The Handbook of Institutional Accreditation states that the midpoint self-study normally includes any matters of concern or recommendations noted in an accreditation action by the Regents and the Commissioner. The agency also states that midpoint self-study can cause an accreditation review of an institution. However, the agency has not provided as documentation a midpoint self-study, nor any other documentation to demonstrate the agency's review and evaluation process for the midpoint self-study.

Although the agency has attached an annual report, which contains fiscal information, and measures of student achievement, the agency did not provide any information or documentation to demonstrate the agency's review and evaluation process for the annual report.

Therefore, the agency did not demonstrate that it has and effectively applies a set of monitoring and evaluation approaches that enables it to identify problems with an institution's continued compliance with agency standards and that takes into account institutional strengths and stability.

#### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it has not implemented the midpoint self-study. Department staff questions the currency and effectiveness of its monitoring mechanism when one approach that is clearly stated in both the Regents Rules and the Handbook of Institutional Accreditation has not been implemented.

Although the agency refers to the previously submitted annual report, the agency still has not provided any information or documentation to demonstrate the agency's review process or evaluation of the annual report, nor any action taken as a result of the review. Specifically, the agency has not demonstrated that it requires additional information from an institution when student achievement data, fiscal information, or any other key data or indicators raise concerns about the institution's compliance with the agency's standards.

The agency states it issues lesser grants of accreditation and/or additional reporting requirements to institutions that have not demonstrated full compliance. However, the agency did not provide any information or documentation as to how this type of action is implemented within the context of the annual report review process.

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**(c) Each agency must monitor overall growth of the institutions or programs it accredits and, at least annually, collect headcount enrollment data from those institutions or programs.**

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The agency discusses two procedures in its narrative which it uses to collect annual headcount data. First, the agency states that accredited institutions provide annual reports that include enrollment data. The agency references the annual report depicted in the Handbook of Institutional Accreditation to document that annual reports require institutions to submit enrollment data, and provided a completed annual report (in Section 602.19(b)). Secondly, the agency states that institutions report enrollment and other data annually that is collected by the New York State Education Department. However, the agency did not provide any information or documentation on what it does with the data it collects to demonstrate that it reviews the data and monitors overall growth.

**Analyst Remarks to Response:**

The agency has provided annual reports within this petition to demonstrate that institutions are required to submit enrollment data annually to the State Education Department. However, the agency has not demonstrated how it monitors overall growth of the institutions it accredits. The agency has not provided any additional documentation to demonstrate its review process and evaluation of the annual headcount data it collects.

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**(d) Institutional accrediting agencies must monitor the growth of programs at institutions experiencing significant enrollment growth, as reasonably defined by the agency.**

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The agency states in its narrative that it collects student enrollment data as part of an institution's annual report. The agency also notes that enrollment data is reviewed by the State Education Department staff. The agency further states "significant enrollment changes up or down, particularly in concert with other indicators (such as an institution's financial health), may initiate an inquiry into the state of the institution's operations". Although the agency provided a completed annual report as evidence, the agency has not provided its significant growth policy; its definition what constitutes significant growth; and its processes and procedures for monitoring institutions identified as having significant growth.

**Analyst Remarks to Response:**

In response to the draft analysis the agency states it will define a significant growth policy and reports that a revised and updated version of its accreditation handbook will be available by the end of 2012. However, until the agency has established a significant growth policy and provided documentation of application of its policy, a finding of compliance cannot be made. Also, the agency must ensure that its updated policy addresses all of the deficiencies noted in the draft report regarding significant growth.

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**(e) Any agency that has notified the Secretary of a change in its scope in accordance with §602.27(a)(5) must monitor the headcount enrollment of each institution it has accredited that offers distance education or correspondence education. If any such institution has experienced an increase in headcount enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data.**

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This agency is required to comply with this criterion because it notified the Secretary in 2009 of a change in its scope to include distance education. This criterion requires the agency to have a policy to specifically require that if any institution experiences an increase in headcount enrollment of 50 percent or more within one institutional fiscal year, the agency must report that information to the Secretary within 30 days of acquiring such data. However, the agency did not provide its written policy for distance education /correspondence headcount monitoring to demonstrate compliance with this section. The agency provided a completed annual report (in Section 602.19(c)), but it did not evidence that the agency collects headcount data for programs taught via distance education, as that institution does not offer programs or courses via distance education.

The agency states that no institution has experienced a growth in enrollment that has required the agency to notify the Secretary. The agency also notes that it understands its responsibilities in accordance with this criterion.

#### **Analyst Remarks to Response:**

The agency states in its response that it will establish a written policy to address increases in distance education headcounts. However, until the agency has done so and provided documentation, a finding of compliance cannot be made. The agency must also demonstrate the application of its policy and procedures for the review of distance education headcount.

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#### **§602.20 Enforcement of standards**

**(b) If the institution or program does not bring itself into compliance within the specified period, the agency must take immediate adverse action unless the agency, for good cause, extends the period for achieving compliance.**

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The agency states in its narrative that section 4-1.3(d) sets forth the procedures for enforcement when an institution is out of compliance with its standards. Section 4-1.3(d)(2) contains policy which identifies the reasons for extending the agency's enforcement times discussed in 602.20(a). However, absent from the agency's policy is the specific length of time for the extension.

The agency references two institutions its narrative that were placed on probation; however, as those institutions were able to bring themselves into compliance within the prescribed probationary period, the examples do not demonstrate that the agency took an adverse action when an institution did not bring itself into compliance, nor that the agency abides by the time period, as required by its policy and this section.. In addition, the agency has not provided documentation demonstrating the application of its good cause extension policy or explained that it has not awarded any good cause extensions.

### **Analyst Remarks to Response:**

In its response to the draft analysis the agency states that it has not had the occasion to grant a good cause extension to an institution.

The agency also states that it does not believe that this criterion requires it to specify a length of time for a "good cause" extension. The basic premise of granting a good cause extension is to award an institution an additional period of time to bring itself into compliance with the agency's accreditation standards. The purpose of identifying a maximum length of time for the extension is to limit the amount of time an institution could be out-of-compliance and ensure that it would not be an indefinite amount of time. It is common practice in the accrediting community that agencies include the length of time for a good cause extension within their policy.

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### **§602.21 Review of standards.**

**(c) If the agency determines, at any point during its systematic program of review, that it needs to make changes to its standards, the agency must initiate action within 12 months to make the changes and must complete that action within a reasonable period of time. Before finalizing any changes to its standards, the agency must--**

- (1) Provide notice to all of the agency's relevant constituencies, and other parties who have made their interest known to the agency, of the changes the agency proposes to make;**
- (2) Give the constituencies and other interested parties adequate opportunity to comment on the proposed changes; and**
- (3) Take into account any comments on the proposed changes submitted timely by the relevant constituencies and by other interested parties.**

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The Handbook of Institutional Accreditation contains the agency's policy addressing this criterion. The agency's policy states "the Regents shall initiate action on changes to the standards within 12 months of identifying a need for such changes." In accordance with the policy, changes will take effect within a stated timeframe after being adopted by the Regents. The agency provided its timeline and documentation related to the current standards review process (in Sections 602.21(a)&(b)).

The agency's policy allows 45 days for public comment by accredited institutions and constituencies. The agency has provided as evidence its public notice document which verifies it provides notification to the public. Even though the agency indicates that it has not received any public comments, the agency's policy needs to clearly indicate that it will take into account any comments submitted timely.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency submitted a document which includes language that addresses the requirements of this criterion to allow for public comment. However, this information is overall State of New York guidance in rulemaking, but does not specifically address the need that the standards review policy clearly indicate that the agency will take into account any comments submitted timely.

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#### **§602.22 Substantive change.**

**(a) If the agency accredits institutions, it must maintain adequate substantive change policies that ensure that any substantive change to the educational mission, program, or programs of an institution after the agency has accredited or preaccredited the institution does not adversely affect the capacity of the institution to continue to meet the agency's standards. The agency meets this requirement if--**

**(1) The agency requires the institution to obtain the agency's approval of the substantive change before the agency includes the change in the scope of accreditation or preaccreditation it previously granted to the institution; and**

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The agency's policy for approval of substantive change is found in Section 4-1.3(f) and 4-1.5(d) of the Rules of the Board of Regents., and is also discussed in the Handbook of Institutional Accreditation. The agency's policy contains procedures requiring institutions to notify the agency of substantive changes and to apply for approval of any substantive change as prescribed in 4-1.5(d)(2). However, the agency's policy does not clearly require prior approval of a substantive change, as the policy states that the notification must occur within 72-hours of the change. In addition, the documentation provided by the agency to demonstrate the application of its policy is insufficient. The documentation does not demonstrate that the institution notified the agency of the substantive change within its required 72-hour timeframe.

More importantly, the agency's policy in Section 4-1.5 (d)(3) allows the State Education Department to approve or disapprove substantive changes. However, substantive change decisions are accreditation decisions and must only be made by the agency's decision-making body (The Commissioner of Education and the Board of Regents). Although the language in the attached documentation indicates that the Board of Regents must approve the substantive change, the agency's substantive change policy does not reflect this procedure. In addition, the agency has not provided any evidence verifying the Commissioner of Education and the Board of Regents approve substantive changes. The agency has not provided the necessary documentation to demonstrate the entire

process for the approval of substantive changes, to include the institution's notification of the substantive change, and the agency's evaluation and approval by its decision-making body.

### **Analyst Remarks to Response:**

In its response to the draft analysis the agency states that a substantive change must be approved prior to the inclusion within the grant of accreditation. However, the agency did not provide any documentation of such a policy nor of application of such a policy.

In addition, the agency states that the "Board of Regents will initiate its rulemaking process as soon as possible to clarify that the Board of Regents and Commissioner of Education approve substantive changes." However, until the agency has established this policy and provided documentation of its implementation, a finding of compliance cannot be made.

The agency also did not provide documentation to demonstrate implementation of its complete substantive change approval process.

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### **(2) The agency's definition of substantive change includes at least the following types of change:**

**(i) Any change in the established mission or objectives of the institution.**

**(ii) Any change in the legal status, form of control, or ownership of the institution.**

**(iii) The addition of courses or programs that represent a significant departure from the existing offerings of educational programs, or method of delivery, from those that were offered when the agency last evaluated the institution.**

**(iv) The addition of programs of study at a degree or credential level different from that which is included in the institution's current accreditation or preaccreditation.**

**(v) A change from clock hours to credit hours.**

**(vi) A substantial increase in the number of clock or credit hours awarded for successful completion of a program.**

**(vii) If the agency's accreditation of an institution enables the institution to seek eligibility to participate in title IV, HEA programs, the entering into a contract under which an institution or organization not certified to participate in the title IV, HEA programs offers more than 25 percent of one**

**or more of the accredited institution's educational programs.**

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As noted in the previous criterion, the agency's substantive change policy is found in section 4-1.3(f) and 4-1.5(d) of the Rules of the Board of Regents. The agency's definitions meets the requirements of (i), (v), and (vi) of this section. However, the agency's definition for the specific substantive changes in (iii) and (iv) lacks the specific language required by this criterion. The agency states that amendments to the Regents Rules due to take effect on June 13, 2012, address (vii) of this criterion, however, the documentation provided (in Section 602.15(a)(2)) is only evidence of proposed changes which have not yet been approved by the Board of Regents and the Commissioner. Department staff cannot make a compliance determination until these amendments have received final approval.

The agency has not provided documentation to demonstrate its approval of the types of substantives changes defined in this criterion, nor evidence of its entire review and approval process for substantive changes. In addition, the agency did not provide any information or documentation on the guidance provided to institutions of the information required to apply for a substantive change.

#### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency provided documentation that amendments to the Regents Rules were approved and address paragraph (vii) of this criterion. The agency states that it will incorporate the requirements in paragraph (iii) and (iv) of this criterion into its policy. However, until the agency has established this policy and provided documentation of its implementation, a finding of compliance cannot be made.

In response to the draft analysis, the agency has not provided documentation to demonstrate its approval of the types of substantives changes defined in this criterion, nor evidence of its entire review and approval process for substantive changes.

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**(viii) (A) If the agency's accreditation of an institution enables it to seek eligibility to participate in title IV, HEA programs, the establishment of an additional location at which the institution offers at least 50 percent of an educational program. The addition of such a location must be approved by the agency in accordance with paragraph (c) of this section unless the accrediting agency determines, and issues a written determination stating that the institution has--**

- (1) Successfully completed at least one cycle of accreditation of maximum length offered by the agency and one renewal, or has been accredited for at least ten years;**
- (2) At least three additional locations that the agency has approved; and**
- (3) Met criteria established by the agency indicating sufficient capacity to add**

**additional locations without individual prior approvals, including at a minimum satisfactory evidence of a system to ensure quality across a distributed enterprise that includes--**

**(i) Clearly identified academic control;**

**(ii) Regular evaluation of the locations;**

**(iii) Adequate faculty, facilities, resources, and academic and student support systems;**

**(iv) Financial stability; and**

**(v) Long-range planning for expansion.**

**(B) The agency's procedures for approval of an additional location, pursuant to paragraph (a)(2)(viii)(A) of this section, must require timely reporting to the agency of every additional location established under this approval.**

**(C) Each agency determination or redetermination to preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section may not exceed five years.**

**(D) The agency may not preapprove an institution's addition of locations under paragraph (a)(2)(viii)(A) of this section after the institution undergoes a change in ownership resulting in a change in control as defined in 34 CFR 600.31 until the institution demonstrates that it meets the conditions for the agency to preapprove additional locations described in this paragraph.**

**(E) The agency must have an effective mechanism for conducting, at reasonable intervals, visits to a representative sample of additional locations approved under paragraph (a)(2)(viii)(A) of this section.**

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The agency's substantive change definition includes adding additional locations as required by this criterion and the agency's definition of additional locations meet the requirements of 602.22(a)(2)(viii). The agency's written policy requires institutions to submit an application seeking approval for the establishment of any additional location at which the institution offers at least 50 percent of an educational program. However, the agency's policy does not describe what information is to be included in the application for the establishment of an additional location.

The agency's policy identifies that the purpose of the site visit associated with the establishment of an additional location is to verify that the institution has the personnel, facilities and resources that the institution stated in its application. However, the agency has not provided documentation to demonstrate its approval process for establishing an additional location; therefore it is not clear the basis on which the agency conducts its review.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency did not provide any additional documentation to demonstrate its approval process for establishing an additional location, nor describe what information is to be included in the application for the establishment of an additional location.

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**(3) The agency's substantive change policy must define when the changes made or proposed by an institution are or would be sufficiently extensive to require the agency to conduct a new comprehensive evaluation of that institution.**

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The agency references its substantive change policy as addressing the requirements of this criterion. However, the agency's written policy nor the procedures discussed in its narrative address the requirements of this criterion. This criterion requires the agency to have established policy that clearly defines when substantive changes made or proposed by an institution are or would be sufficiently extensive to require a new comprehensive evaluation (a new grant of accreditation including a site visit, submission of a self-study, and new decision regarding accreditation). Based on the information provided, the agency does not appear to have a mechanism in place, enabling its decision-making body to assess multiple substantive change requests, either individually or holistically, and determine if the changes are significant enough to require a new comprehensive evaluation. In addition, the agency did to provide any documentation to demonstrate compliance with this section.

### **Analyst Remarks to Response:**

In its response, the agency has not provided any additional documentation to address the issues and concerns cited in the draft analysis. The agency continues to reference its current substantive change policy as addressing the requirements of this criterion, which it does not as described in the draft staff analysis. Specifically, the requirement for a site visit in response to an individual substantive change request is not the same as a policy regarding an agency's review of multiple substantive change requests and determination if the changes are significant enough to require a new comprehensive evaluation. In addition the agency has not provided any documentation to demonstrate implementation of a policy that meets the requirements of this criterion.

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**(b) The agency may determine the procedures it uses to grant prior approval of the substantive change. However, these procedures must specify an effective date, which is not retroactive, on which the change is included in the program's or institution's accreditation. An agency may designate the date of a change in ownership as the effective date of its approval of that substantive change if the accreditation decision is made within 30 days of the change in ownership. Except as provided in paragraph (c) of this section, these procedures may, but**

**need not, require a visit by the agency.**

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The agency's established policy does not address the requirements of this criterion. The agency states in its narrative that the effective date of an approved substantive change is the date of the agency's determination; however, this is not stated in its policy. The policy does not include information as to when a substantive change would become effective nor that it will not be retroactive. The agency has attached a substantive change record as evidence, but it does not demonstrate that the agency followed its written policy outlined in section 4-1.5(d) of the Rules of the Board of Regents nor include all documentation to demonstrate compliance, to include an approval letter from the decision-making body.

**Analyst Remarks to Response:**

In its response, the agency did not provide any additional documentation to address the issues and concerns cited in the draft analysis regarding substantive change procedures. The agency states that the "Board of Regents will initiate its rulemaking process as soon as possible" to address the areas of concern in this criterion. However, until the agency has established this policy and provided documentation of its implementation, a finding of compliance cannot be made.

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**§602.23 Operating procedures all agencies must have.**

**(a) The agency must maintain and make available to the public written materials describing--**

**(1) Each type of accreditation and preaccreditation it grants;**

**(2) The procedures that institutions or programs must follow in applying for accreditation or preaccreditation;**

**(3) The standards and procedures it uses to determine whether to grant, reaffirm, reinstate, restrict, deny, revoke, terminate, or take any other action related to each type of accreditation and preaccreditation that the agency grants;**

**(4) The institutions and programs that the agency currently accredits or preaccredits and, for each institution and program, the year the agency will next review or reconsider it for accreditation or preaccreditation; and**

**(5) The names, academic and professional qualifications, and relevant employment and organizational affiliations of--**

- (i) The members of the agency's policy and decision-making bodies; and**
  - (ii) The agency's principal administrative staff.**
- 

The agency maintains and makes available to the public most of the information required by this criterion on its website. The agency displays on its website information about each type of accreditation it grants, and it defines its accreditation statuses in the Handbook of Institutional Accreditation and in the Rules of the Board of Regents, which are both available on the agency's website. These publications also contain the agency's procedures for applying for accreditation.

A complete and current listing of accredited programs is on the agency's website. The listing includes the institution's initial accreditation or most-recent grant of accreditation date and the date the institution's accreditation expires.

The agency's website lists the names, academic and professional qualifications of the Board of Regents and the Commissioner of Education which serve as the agency's policy-making and decision-making body. The relevant employment and organizational affiliations of these individuals is available by accessing their biographical information on the agency's website. As noted in Section 602.15(a)(1), the State Education Department (SED), Office of College and University Evaluation (OCUE) carries out the Regent's accreditation activities. Overall staff within the OCUE office consists of its coordinator, and four staff members. However, the names academic and professional qualifications and relevant employment and organizational affiliations of these individuals are not readily available to the public. The agency's states in its narrative that the qualifications and background information of its accreditation staff may be obtained from the New York State Department of Civil Service records, SED human resources records, and other public records. However, this seems to indicate that this information must be requested and is not readily available to the public. The appeals panel is also considered a decision making body in accordance with the Secretary's Criteria for Recognition; therefore, the agency must make available to the public all of the information required by this criterion for members of its appeal panel.

#### **Analyst Remarks to Response:**

The regulations specifically require the agency to make available to the public the names, academic and professional qualifications, and relevant employment and organizational affiliations of the members of the agency's policy and decision-making bodies; and the agency's principal administrative staff. The Department acknowledges that the regulation as written in the e-Recognition system included an error and did not reflect the regulation as published in 34 CFR Section 602.23(a).

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**(c) The accrediting agency must--**

**(1) Review in a timely, fair, and equitable manner any complaint it receives against an accredited institution or program that is related to the agency's standards or procedures. The agency may not complete its review and make a decision regarding a complaint unless, in accordance with published procedures, it ensures that the institution or program has sufficient opportunity to provide a response to the complaint;**

**(2) Take follow-up action, as necessary, including enforcement action, if necessary, based on the results of its review; and**

**(3) Review in a timely, fair, and equitable manner, and apply unbiased judgment to, any complaints against itself and take follow-up action, as appropriate, based on the results of its review.**

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Although the agency describes its complaint procedures in its narrative, it did not provide its written policy or procedures concerning complaints it receives regarding an institution to include all areas required by this section. The agency has also provided an attachment which documents the application of the procedures discussed in the agency's narrative.

The agency provided its policy and procedures regarding complaints against itself in the Handbook of Institutional Accreditation. The agency also provided a letter as evidence of implementation of the policy, but the letter alone does not demonstrate implementation of its policy and procedures.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it will publish in its Handbook of Institutional Accreditation and on its website complaint procedures addressing the requirements of this criterion. However, to be considered as corrective action the policy changes must be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

In addition, the agency did not provide any additional information or documentation regarding implementation of policy and procedures regarding complaints against itself.

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**§602.24 Additional procedures certain institutional accreditors must have.**

**If the agency is an institutional accrediting agency and its accreditation or preaccreditation enables those institutions to obtain eligibility to participate in Title IV, HEA programs, the agency must demonstrate that it has established and uses all of the following procedures:**

**(2) The agency must evaluate the teach-out plan to ensure it provides for the equitable treatment of students under criteria established by the agency, specifies additional charges, if any, and provides for notification to the students of any additional charges.**

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The agency states in its narrative that "tuition and fee charges fall under the province of individual institutions of higher education". In addition, the agency references State law as requiring institutions to clearly publish tuition and fee charges. However, State law is not applicable when addressing requirements that pertain to the Secretary's Criteria for Recognition in this section. In its function as an accreditor of institutions within the State of New York, this criterion requires the agency to have written policy requiring accredited institutions to specify additional charges and provide notice to students concerning those charges associated with teach-out plans. The agency must also have provide information about the criteria it has established to evaluate teach-out plans to ensure the equitable treatment of students.

In addition, the agency has provided no evidence to demonstrate its evaluation of teach-out plans in accordance with the requirements of this section.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it will amend it policy to address the issues cited to include the requirement that accredited institutions specify any additional charges and provide notice to students concerning those charges associated with teach-out plans . However, to be considered as corrective action the policy changes must be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time. The agency must ensure that its amended policy addresses all of the requirements of this criterion, and must also demonstrate application of its policy.

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**(3) If the agency approves a teach-out plan that includes a program that is accredited by another recognized accrediting agency, it must notify that accrediting agency of its approval.**

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The agency references the policy in its Handbook of Institutional Accreditation as addressing the requirements of this criterion. However, the policy referenced by the agency is a general notification policy where the agency states that it will "upon request" share information with other recognized agencies. This policy does not meet the requirements of this section to notify another recognized accrediting agency of an approved teach-out plan. In addition, the agency did not provide any documentation to demonstrate implementation of such a policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that its Handbook of Institutional Accreditation will be updated to address the requirements of this criterion and that these updates should be completed by the end of 2012. However, the agency did not provide documentation of implementation of the additional guidance to meet the requirements of this section; therefore, a compliance determination cannot be made at this time.

The agency also states that it has not had the occasion to apply such a policy, and therefore could not provide documentation of its effective application.

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**(5) The agency must require an institution it accredits or preaccredits that enters into a teach-out agreement, either on its own or at the request of the agency, with another institution to submit that teach-out agreement to the agency for approval. The agency may approve the teach-out agreement only if the agreement is between institutions that are accredited or preaccredited by a nationally recognized accrediting agency, is consistent with applicable standards and regulations, and provides for the equitable treatment of students by ensuring that--**

**(i) The teach-out institution has the necessary experience, resources, and support services to--**

**(A) Provide an educational program that is of acceptable quality and reasonably similar in content, structure, and scheduling to that provided by the institution that is ceasing operations either entirely or at one of its locations; and**

**(B) Remain stable, carry out its mission, and meet all obligations to existing students; and**

**(ii) The teach-out institution demonstrates that it can provide students access to the program and services without requiring them to move or travel substantial distances and that it will provide students with information about additional charges, if any.**

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The agency references amendments to Section 4-1.4(l) of the Regent's Rules to address the requirements of this section concerning teach-out agreements. The agency notes that the amendments are effective June 13, 2012. However, the agency has not provided documentation showing that these amendments have been approved and adopted by Board of Regents and the Commissioner of Education. In addition, neither the agency's amended policy nor its current policy includes the requirement that an institution provides students with information about additional charges, if any.

The agency provided documentation to demonstrate application of its policy. However, this documentation only provides evidence of the process in establishing teach-out agreements and of articulation agreements between

institutions. Articulation agreements between institutions are different than teach-out agreements. The agency has not provided documentation to evidence the agency's evaluation and approval of a teach-out agreement to meet the requirements of this section.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provided any additional documentation to demonstrate its compliance with this criterion. Although the agency provided evidence that the policy updates included in the draft analysis have been approved by the Board of Regents, it has not further amended its policy to require that institutions provide students with information about additional charges, if any, associated with teach-out agreements.

The agency states in its narrative that it has not had the occasion to apply its updated policy. And, the agency states that it documented the only application of its teach-out agreement policy in its previous submission and did not provide any additional documentation of implementation of its revised policy and procedures. Therefore, the agency still has not provided sufficient documentation to evidence the agency's evaluation and approval of a teach-out agreement to meet the requirements of this section.

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**(d) Closed Institution.**

**If an institution the agency accredits or preaccredits closes without a teach-out plan or agreement, the agency must work with the Department and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.**

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The agency states in its narrative that it will work with the Department and appropriate State agency in accordance with the requirements of this criterion. However, the agency does not have written policy addressing this criterion. In addition, the agency did not provide documentation of implementation of such a policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it will revise its policy to meet the requirements of this section. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

The agency also states that it has not had the occasion to apply such a policy, and therefore could not provide documentation of implementation.

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**(e) Transfer of credit policies.**

The accrediting agency must confirm, as part of its review for initial accreditation or preaccreditation, or renewal of accreditation, that the institution has transfer of credit policies that--

- (1) Are publicly disclosed in accordance with §668.43(a)(11); and**
- (2) Include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education.**

**(Note: This criterion requires an accrediting agency to confirm that an institution's teach-out policies are in conformance with 668.43 (a) (11). For your convenience, here is the text of 668.43(a) (11):**

**“A description of the transfer of credit policies established by the institution which must include a statement of the institution's current transfer of credit policies that includes, at a minimum –**

- (i) Any established criteria the institution uses regarding the transfer of credit earned at another institution; and**
  - (ii) A list of institutions with which the institution has established an articulation agreement.”)**
- 

The agency references amendments to its consumer information standard in Section 4-1.4(i) of the Regent's Rules as addressing the requirement of this criterion. However, these amendments do not clearly indicate that the public disclosure would be implemented as required. Specifically, the amendment does not contain the requirement that institutions must include a statement of the criteria established by the institution regarding the transfer of credit earned at another institution of higher education or a list of institutions with which it has established an articulation agreement. In addition, the agency has not submitted any documentation to demonstrate the implementation of the policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provided any additional documentation to demonstrate its compliance with this criterion. The agency states that the Board of Regents will initiate its rulemaking process as soon as possible to meet the requirements of this section. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

While the agency states that it has not had the occasion to apply its policy, Department staff noted that the agency will review institutions for initial or renewal of accreditation within 12 months, and therefore will be able to provide documentation of implementation of the process within that time period.

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**(4) If, following the institutional review process under this paragraph (f), the agency finds systemic noncompliance with the agency's policies or significant noncompliance regarding one or more programs at the institution, the agency must promptly notify the Secretary.**

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The agency references its notification policy to the Department in the Handbook of Institution Accreditation as addressing the requirement of this criterion. However, this policy does not address all of the specific requirements of this criterion. The agency must establish a written policy that specifically requires it to promptly notify the Secretary if the agency finds systemic noncompliance with its credit hour policies or significant noncompliance regarding one or more programs at the institution. The agency must also demonstrate the application of its policy, or indicate that it has not had the opportunity to do so.

**Analyst Remarks to Response:**

The agency states in its response that it has not found an institution out of compliance with its credit hour requirements, and has not had to apply its policy in this area. However, the agency has not provided its written policy that specifically requires it to promptly notify the Secretary if the agency finds systemic noncompliance with its credit hour policies or significant noncompliance regarding one or more programs at the institution, as noted in the draft analysis.

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**§602.25 Due process**

**The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:**

- (a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.**
- (b) Uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.**
- (c) Provides written specification of any deficiencies identified at the institution or program examined.**
- (d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.**

**(e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.**

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The agency has established accreditation standards and policies which provide institutions seeking initial accreditation or institutions undergoing a renewal of accreditation detailed information concerning the agency's accreditation process, as required by paragraph (a) of this criterion. The agency accreditation standards are found in the Rules of the Board of Regents and its policies are found in the Handbook of Institutional Accreditation.

The attached site visit team report that provides the institution with its written accreditation standards and information related to the institution's compliance or noncompliance with the agency's standards. The agency also provides institutions with a preliminary draft compliance report, which includes the site visit team's recommendations for institutional improvement or noncompliance/compliance with specific standards and a preliminary recommendation on accreditation action.

In accordance with its policies, within 30 days from the date the agency sends the report, institutions are given the opportunity to respond in writing to the draft compliance report. In accordance with its policy, the institution under review may make oral presentation before a final accreditation decision is made. Additional steps in the policy are outlined in the Handbook of Institutional Accreditation and Section 4-1.5 of the Rules of the Board of Regents.

The agency's policies adequately address the requirements of this criterion. However the documentation provided by the agency is insufficient to demonstrate the application of its policy. The agency allows institutions 30 days to respond in writing to the draft compliance report (see attachment A25a, 602.17(d)) I The agency has not provided documentation demonstrating it notifies the institution in writing of any adverse action and that it describes the basis for the action. The probationary action letter it provided under 602.20(a) merely states that the Regents voted to grant probationary accreditation for a period of two years.

#### **Analyst Remarks to Response:**

In response to the draft analysis, the agency references a previously-submitted attachment (A37) to demonstrate that it notifies an institution in writing of any adverse action and that it prescribes the basis for the action. That attachment documents an appeals action which would occur after an initial notification of adverse action. The agency still has not provided any documentation that it notifies an institution in writing of any adverse accrediting action, or an action to place an institution on probation or show cause, and that it describes the basis

for the action.

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**(f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final.**

**(1) The appeal must take place at a hearing before an appeals panel that--**

**(i) May not include current members of the agency's decision-making body that took the initial adverse action;**

**(ii) Is subject to a conflict of interest policy;**

**(iii) Does not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, or reverse adverse actions of the original decision-making body; and**

**(iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel's decisions or instructions.**

**(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.**

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The agency's appeals panel policies are in section 4-1.5(a) (11) of the Rules of the Board of Regents. The agency's appeals policies and processes are not compliant with this criterion. The agency's appeals panel ("a standing subcommittee on accreditation appeals of the committee on higher education of the Board of Regents") does not appear to meet the composition requirements of this criterion. The agency did not provide any information or documentation concerning the appeals panel members, however a standing subcommittee of the Board of Regents would mean that it includes current members of the Board of Regents and therefore current members of the agency's decision-making body that took the adverse action. In addition, the agency's appeals panel must include a public member, as well as academic and administrative representation, but no documentation was provided to demonstrate the required composition.

As noted previously in Section 602.15(a)(6), the agency has not demonstrated

that it has and how it effectively applies clear and effective controls against conflicts of interest for its appeals panel.

It is not clear that the appeals policies and procedures contain all of the required elements. Specifically, the appeals panel does not clearly have the authority to affirm, amend, reverse, or remand the adverse action, as required by this section. The appeals policies and procedures also do not clearly allow for the institution to appear before the appeals panel and make any presentation that the agency permits, as the review appears to be a paper review process instead of a hearing. In addition, the agency's policy does not recognize the right of an institution to employ legal counsel to represent it during an appeal.

In accordance with its policy, an institution's appeal is submitted through the Commissioner of Education to the appeals panel, which makes a recommendation to the Board of Regents for a final decision. The function of the Commissioner of Education as the conduit of the appeal and excluded from the implementation of the final decision calls into question the structure of the agency's stated decision-making body (both Board of Regents and Commissioner of Education).

The agency provided documentation of the only appeal on record, and therefore has not had the opportunity to demonstrate implementation of its current policies and procedures. However, based on the information provided, the agency has not demonstrated that, should another appeal occur, it has the required policies and procedures in place.

The agency's policies provide for an appeal of the RAC recommendation. As that process does not concern a final accreditation decision, it is not subject to the requirements of this section. However, the agency needs to ensure that use of this process does not result in extending the deadlines applicable under 602.20.

#### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that the Board of Regents will initiate its rulemaking process as soon as possible to address the requirements of this criterion, and did not provide any further information or documentation to address the deficiencies noted. However, to be considered as corrective action any policy change would have to be approved by the Board of Regents and the agency would have to provide documentation to demonstrate implementation; therefore, a compliance determination cannot be made at this time.

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**(g) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.**

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Although the agency has provided documentation demonstrating that it notifies the institutions in writing of the appeal result and basis of the result, it does not have a written policy to require such notification.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that additional guidance will be developed and inserted in the Handbook of Institutional Accreditation. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

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**(h)(1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:**

**(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.**

**(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.**

**(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.**

**(h)(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.**

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The agency states in its narrative that amendments to Regents Rules that become effective June 13, 2012 specifically note the ability of institutions to provide additional relevant financial information. The agency must provide evidence depicting the approval and implementation of the proposed amendments by the Commissioner of Education and the Board of Regents.

In addition, the proposed amendments to Section 4-1.5(vi) of the Regent's Rules are only in partial compliance with this criterion. The agency's amended policy does not address the specific requirements that the agency have a process that allows an institution to seek the review of new financial information only once, and that any determination by the agency made with respect to that review does not provide a basis for an appeal.

The agency indicated (in Section 602.25(f)) that it has had only one appeal and finances were not the only issue. Therefore, the agency has not had the opportunity to implement its policy.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency provided the evidence depicting the approval and implementation of the proposed amendments by the Commissioner of Education and the Board of Regents. However, the agency has not provided evidence that it has further amended its policy to address the specific requirements of this criterion that the agency have a process that allows an institution to seek the review of new financial information only once, and that any determination by the agency made with respect to that review does not provide a basis for an appeal.

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### **§602.26 Notification of accrediting decisions**

**The agency must demonstrate that it has established and follows written procedures requiring it to provide written notice of its accrediting decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public. The agency meets this requirement if the agency, following its written procedures--**

**(a) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and the public no later than 30 days after it makes the decision:**

- (1) A decision to award initial accreditation or preaccreditation to an institution or program.**
  - (2) A decision to renew an institution's or program's accreditation or preaccreditation;**
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The agency provided its policy for the notifications of positive decisions in the Handbook of Institutional Accreditation; however the agency groups the various types of notification actions together when these actions have very different regulatory notification requirements.

The agency's policy does not specifically address the notification of positive decisions, nor the requirement to provide written notice within 30 days. In addition, absent from its current written policy is the requirement to notify the appropriate State licensing, or authorizing agency.

Although the agency notification to the Secretary was timely, it did not demonstrate that the appropriate State licensing or authorizing agency, or the appropriate accrediting agencies were notified. Also the public notification in the State register was not posted within the 30 day requirement.

### **Analyst Remarks to Response:**

In its response, the agency states that the same State office that administers the accreditation function administers the State approval function. Due to the unique relationship between the agency and the State approval entity, specific reference to the State approval agency is not required in the agency's policy, nor does the agency need to provide documentation of its notification to that entity.

In its function as an accrediting agency, to be compliant with the Secretary's Criterion for Recognition, the agency must have a written policy that specifically addresses notification of positive decisions. The agency is required to demonstrate the application of its policy, including that it notifies the entities required by this criterion no later than 30 days after it makes the decision.

Although the agency states that it will try to meet the notification deadline of 30 days required by this section, it did not provide any documentation of such notification within the timeframe nor to demonstrate that all entities were notified (i.e. recognized accrediting agencies and the public).

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**(b) Provides written notice of the following types of decisions to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program of the decision, but no later than 30 days after it reaches the decision:**

- (1) A final decision to place an institution or program on probation or an equivalent status.
  - (2) A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or program;
  - (3) A final decision to take any other adverse action, as defined by the agency, not listed in paragraph (b)(2) of this section;**
- 

The agency's policy is out of compliance with this criterion, as it lacks the specific language required. Specifically, the agency's policy does not include the requirement to notify the appropriate State licensing or authorizing agency, nor that it provides the notification to the entities required at the "same time" it notifies the institution of its decision, but not later than 30 days after it reaches the decision.

Although the agency's policy includes reference to the Secretary's Criteria for Recognition in this area, this reference does not meet the intention to clearly describe the types of decisions included.

Although the agency provided documentation of a denial action, the example does not demonstrate notification of the appropriate State licensing or authorizing agency, nor does it demonstrate notification of probation actions or

the equivalent.

**Analyst Remarks to Response:**

In its response, the agency states that the same State office that administers the accreditation function administers the State approval function. Due to the unique relationship between the agency and the State approval entity, specific reference to the State approval agency is not required in the agency's policy, nor does the agency need to provide documentation of its notification to that entity.

The agency has not provided any additional information or documentation to address the issues cited in the draft analysis, to include demonstration of notification of probation actions or the equivalent.

The agency states that its policy will be revised to respond to issues cited in the draft analysis, to include the clear description of the types of decisions included in the notification, and notification to all of the entities required at the "same time" it notifies the institution of its decision, but not later than 30 days after it reaches the decision. As discussed previously, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time. The agency must also demonstrate the application of its policy.

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**((d) For any decision listed in paragraph (b)(2) of this section, makes available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected institution or program may wish to make with regard to that decision, or evidence that the affected institution has been offered the opportunity to provide official comment; and**

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The agency's policy states that the brief summary of the negative decision is made available to the Secretary and the public within (60) days after the final decision is made, upon request. However, this criterion requires provision of this information absent a specific request, and also requires notice to the appropriate State licensing or authorizing agency. In addition, the agency did not provide documentation that it provides a brief statement summarizing the reasons for its decision to the entities listed and no later than 60 days after the decision. In addition, the agency did not provide documentation to demonstrate that it affords the affected institution the opportunity to provide official comments regarding a negative decision, nor evidence that it provided those comments to the Department, the appropriate State licensing or authorizing agency and the public, as required.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provide any additional information or documentation to demonstrate its compliance with the issues cited in the draft analysis. The agency also states that the same State office that administers the accreditation function administers the State approval function. As noted previously, Department staff acknowledge the unique relationship between the agency and the State approval entity and does not require that the agency include specific reference to the State approval agency in its policy, nor provide documentation of its notification to that entity.

The agency also states that it will clarify the language of cited policies in its Handbook of Institutional Accreditation and align it with the requirements of this section. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

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**(e) Notifies the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program--**

- (1) Decides to withdraw voluntarily from accreditation or preaccreditation, within 30 days of receiving notification from the institution or program that it is withdrawing voluntarily from accreditation or preaccreditation; or
  - (2) Lets its accreditation or preaccreditation lapse, within 30 days of the date on which accreditation or preaccreditation lapses.
- 

The agency's policies regarding voluntary withdrawal of accreditation or a lapse of accreditation are included in the Handbook of Institutional Accreditation. However, these policies do not meet the requirements of this section. Specifically, neither policy includes the requirement to notify the appropriate State licensing or authorizing agency and, upon request, the public (even though the agency states in its narrative that this provision is included).

The documentation submitted by the agency demonstrates that it notified the Secretary within the 30 day timeframe for voluntary withdrawals. The agency also stated that it has not encountered a lapse of accreditation, and therefore, could not provide documentation of implementation of that policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provided any additional information or documentation to demonstrate its compliance with the issues cited in the draft analysis. The agency also states that the same State office that administers the accreditation function administers the State approval function. As noted previously, Department staff acknowledge the unique relationship between the agency and the State approval entity and does not require that the agency include specific reference to the State approval agency in its agency's

policy, nor provide documentation of its notification to that entity. However, until the agency amends its current policy to address the requirement to provide the public, upon request, the agency continues to be out of compliance with this criterion.

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**§602.27 Other information an agency must provide the Department.**

**(a)(6) The name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency's reasons for concern about the institution or program; and**

**(a)(7) If the Secretary requests, information that may bear upon an accredited or preaccredited institution's compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs.**

**(b) If an agency has a policy regarding notification to an institution or program of contact with the Department in accordance with paragraph (a)(6) or (a)(7) of this section, it must provide for a case by case review of the circumstances surrounding the contact, and the need for the confidentiality of that contact. Upon a specific request by the Department, the agency must consider that contact confidential.**

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The agency's provided its policy on fraud and abuse notification as included in the Handbook of Institutional Accreditation; however that policy is only in partial compliance with this criterion.

The agency's policy does not specifically address the requirement that if the agency has a policy regarding notification to an institution of contact with the Department (which the agency does), it must provide for a case by case review of the circumstances surrounding the contact, the need for the confidentiality of that contact, and, upon a specific request by the Department, the agency must consider that contact confidential. The agency states that it has not had the opportunity to implement this policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it will amend its policy to respond to the issues raised in the draft analysis and to meet the requirements of this section. However, until the agency amends its current policy to address the issues cited in the draft analysis it continues to be out of compliance with this criterion.

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**§602.28 Regard for decisions of States and other accrediting agencies.**

**(a) If the agency is an institutional accrediting agency, it may not accredit or preaccredit institutions that lack legal authorization under applicable State law to provide a program of education beyond the secondary level.**

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The agency addresses this criterion in Section 4-1.3(a) of the Rules of the Board of Regent. The agency requires that an institution must be authorized to confer at least one degree and be in compliance with State approval standards to be eligible for accreditation, and the agency's standard references the specific State regulations applicable. However, the agency has not provided any documentation to demonstrate application of its policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provided any additional documentation to demonstrate the application of its policy. Although the agency states that the State office which administers the accreditation function also administers the authorization of degree-granting, postsecondary institutions in New York State, it must provide documentation to demonstrate application of its legal authorization policy.

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**(b) Except as provided in paragraph (c) of this section, the agency may not grant initial or renewed accreditation or preaccreditation to an institution, or a program offered by an institution, if the agency knows, or has reasonable cause to know, that the institution is the subject of--**

- (1) A pending or final action brought by a State agency to suspend, revoke, withdraw, or terminate the institution's legal authority to provide postsecondary education in the State;**
- (2) A decision by a recognized agency to deny accreditation or preaccreditation;**
- (3) A pending or final action brought by a recognized accrediting agency to suspend, revoke, withdraw, or terminate the institution's accreditation or preaccreditation; or**
- (4) Probation or an equivalent status imposed by a recognized agency.**

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The agency's written policy under Section 4-1.3(f) (4) of the Rules of the Board of Regents does not address the requirements of this criterion. The agency's standards discuss the requirement for an institution to notify the agency of any negative actions by a nationally recognized accrediting agency. However, this criterion requires the agency to have written policy precluding it from granting initial or renewed accreditation to an institution that the agency knows, or has reasonable cause to know, that the institution is the subject of the specific pending or final actions by both nationally recognized accrediting agencies and State agencies listed in this section.

The agency also needs to provide evidence of its application of this policy, or indicate that it has not had occasion to apply it.

### **Analyst Remarks to Response:**

In its response to the draft analysis, the agency states that it references the requirements of this section within its Handbook of Institutional Accreditation. However, the information referenced does not include the specific requirements of this section, to include a written policy precluding it from granting initial or renewed accreditation to an institution that the agency knows, or has reasonable cause to know, is the subject of the specific pending or final actions by either nationally recognized accrediting agencies or State agencies. The agency states that it will revise its policy to respond to the findings included in the draft analysis. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

The agency has not provided any additional documentation to demonstrate application of a related policy and its compliance with this criterion. The agency must demonstrate the application of its policy, or indicate that it has not had occasion to apply it.

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**(c) The agency may grant accreditation or preaccreditation to an institution or program described in paragraph (b) of this section only if it provides to the Secretary, within 30 days of its action, a thorough and reasonable explanation, consistent with its standards, why the action of the other body does not preclude the agency's grant of accreditation or preaccreditation.**

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The agency's policy addressing this criterion is found in the Handbook of Institutional Accreditation. The agency's policies allow for a grant of accreditation to an institution subject to an adverse action by another nationally recognized agency. The policy is clear in stating that the agency will only grant accreditation if the action is consistent with the agency's standards. It is also clear that it will provide the Department with an explanation within 30 days. The agency's policy is not clear, however, in stating that it is required to explain to the Secretary why the actions of the other agency did not preclude the Board of Regents from accrediting the institution.

The agency needs to make it clear in its policy and application of its policy that the requirement is not to tell the Department why the institution now meets the Board of Regent's standards, rather it must communicate why the issue(s) that caused the adverse action by the other accreditor was not compelling in the Board of Regent's decision and did not preclude the agency from coming to its decision to grant accreditation.

The agency states that it has not granted accreditation to such an institution, and therefore, could not document policy implementation

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency has not provided any additional information or documentation to demonstrate its compliance with this criterion. The agency states that it will revise its policy to respond to the findings of the draft analysis. However, to be considered as corrective action the policy changes would have to be approved by the Board of Regents; therefore, a compliance determination cannot be made at this time.

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**(d) If the agency learns that an institution it accredits or preaccredits, or an institution that offers a program it accredits or preaccredits, is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the agency must promptly review its accreditation or preaccreditation of the institution or program to determine if it should also take adverse action or place the institution or program on probation or show cause.**

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The agency states that Sections 4-1.3(g) and 4-1.5(c) of the Regents Rules address the requirements of this section, which require the agency to initiate a review of an institution when the agency learns that the institution is subject to a negative action by another body, as listed in this section. Although the agency's policies require the initiation of a review, it is not clear that the review would include a determination if it should also take an adverse action or place the institution on probation or show cause.

The agency states that it has not had the opportunity to implement this policy.

**Analyst Remarks to Response:**

In its response to the draft analysis, the agency explains the intent and purpose of its current policy. However, as noted in the draft analysis, it is the agency's current written policy that does not clearly contain the specific possible outcomes of the review as required by this criterion.

**PART III: THIRD PARTY COMMENTS**

The Department did not receive any written third-party comments regarding this agency.